

**Martin C. Dolan, OSB No. 87205**

e-mail: [martindolan@dolanriggs.com](mailto:martindolan@dolanriggs.com)

**DOLAN GRIGGS LLP**

1130 S.W. Morrison, Suite 630

Portland, Oregon 97205

Telephone: (503) 228-7500

Fax: (503) 243-1188

Attorney for Plaintiff

FILED '08 JAN 8 16:19 USD ORP

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**SUSAN NOWLAND,**

Plaintiff,

v.

**HILL-ROM COMPANY, INC., and  
HILLENBRAND INDUSTRIES,**

Defendants.

Case No.

**CV '08-0046-AA**

**COMPLAINT**

(Title VII, 42 U.S.C. §2000e *et seq.*: Sex Discrimination and Retaliation; ADEA, 29 U.S.C. §623(a), Age Discrimination and Retaliation; ORS 659A.030: Sex/ Age Discrimination and Retaliation; Wrongful Discharge)

**NATURE OF THE ACTION**

1.

This is an action under Title VII, 42 U.S.C. §2000e and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §623(a), to vindicate plaintiff's rights to enjoy all benefits, privileges, terms and conditions of her employment without regard to her gender or age, to be free from discrimination and retaliation on the basis of gender and age, and to make plaintiff whole.

2.

This is also an action for violation of Oregon statutory and common law pursuant to this Court's supplemental jurisdiction.

1 - COMPLAINT

DOLAN GRIGGS LLP  
1130 S.W. Morrison, Suite 630  
Portland, Oregon 97205  
(503) 228-7500  
Fax: (503) 243-1188

1/9/08

## **JURISDICTION AND VENUE**

3.

This Court has original jurisdiction over the subject matter of plaintiff's claims pursuant to 28 USC §§1331 and 1343. This action is authorized and instituted pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5, as amended.

4.

Venue is proper under 42 U.S.C. §2000e-5(f)(3) because plaintiff would have been employed in the District of Oregon but for the unlawful employment practice alleged herein.

5.

This Court has jurisdiction over plaintiff's state law claims set forth in this complaint under 28 USC §1367, pursuant to its supplemental jurisdiction to hear related state law claims. The state claims alleged herein arose from a common nucleus of operative facts, are related to the federal claims such that they form part of the same case or controversy, and the actions would ordinarily be expected to be tried in one judicial proceeding.

## **PARTIES**

6.

Plaintiff is currently a resident of Alaska. At all material times to this Complaint, plaintiff temporarily resided in Oregon. Plaintiff is female, and fifty-six years old. Plaintiff was at all material times was qualified for the positions she held and applied for with Defendants.

7.

Defendant Hill-Rom is a wholly-owned subsidiary of Hillenbrand Industries, registered to do business in Oregon. Hill-Rom and Hillenbrand Industries have their principal place of business in Batesville, Indiana. Defendants at all material times, and for all intents and purposes acted and operated as the same entity. Defendants (collectively, "Hill-Rom") employed at all material times in excess of 100 employees.

## **PROCEDURAL REQUIREMENTS**

8.

Plaintiff filed a complaint with the with regard to her claims of discrimination and/or retaliation on or about October 31, 2007, with the Alaska State Commission on Human Rights Commission ("ASCHR"). The ASCHR co-filed her complaint with the Equal Employment Opportunity Commission ("EEOC") on or about November 16, 2007. Plaintiff has timely commenced this action after receiving a right to sue letter from EEOC dated December 12, 2007.

9.

Plaintiff has exhausted her administrative remedies.

## **FACTS**

10.

Plaintiff has worked for Hill-Rom as an Account Clinical Director since 1994. In January 2000, Hill-Rom assigned her responsibilities as its Alaska General Manager in addition to her ACD duties. Plaintiff also covered vacant ACD and GM territories when needed.

11.

In February of 2007, a position opened up in Oregon as a General Manager. Plaintiff applied for the position and was informed that she would receive a guaranteed draw of \$110,000 to \$120,000 against commissions. She successfully covered the Oregon territory during this period.

12.

Hill-Rom then desired to hire a younger, less experienced male who applied for the position after plaintiff. For the purpose of getting plaintiff to decline the position, Hill-Rom split the territory in two in April/May 2007, and gave plaintiff a written offer of \$70,000 guaranteed draw.

///

13.

Hill-Rom then hired the younger, less experienced male in his for the position, and gave him the entire territory as well as a \$120,000 guaranteed draw.

14.

Plaintiff complained to Hill-Rom that its acts were discriminatory, based on age and sex.

15.

Hill-Rom thereafter terminated plaintiff's employment effective December 10, 2007, and denied her request for a severance package, because she complained of sex and age discrimination. Hill-Rom later amended the termination date to December 31, 2007.

**PLAINTIFF'S FIRST CLAIM AGAINST DEFENDANTS**  
**(Title VII, 42 U.S.C. §2000e *et seq.* - Sex Discrimination/ Retaliation)**

16.

Plaintiff incorporates and realleges paragraphs 1 through 15 above.

17.

Hill-Rom discriminated against plaintiff in the terms and conditions of her employment because of her sex and/or retaliated against plaintiff for complaining about sex discrimination, in violation of Title VII, 42 USC §2000e *et seq.* in one or more of the following ways:

- (a) by subjecting plaintiff to disparate wages for equal or better work performed;
- (b) by rescinding an offer of employment and changing the terms to make it untenable for plaintiff;
- (c) by hiring a younger, less experienced male for the position it rescinded from plaintiff and on better terms than offered to plaintiff;
- (d) by threatening plaintiff's employment;
- (e) by terminating plaintiff's employment; and/or

(f) by refusing severance given to similarly situated males.

18.

As a result of Hill-Rom's actions, plaintiff suffered economic damages, and is entitled to back pay and front pay in lieu of reinstatement pursuant to 42 U.S.C. §2000e-5(g), in an amount to be determined at trial.

19.

As a result of Hill-Rom's actions, plaintiff has suffered emotional distress and seeks non-economic damages pursuant to 42 USC §1981a(a)(1), in an amount to be proven at trial, but which is alleged to be not less than \$300,000.

20.

Hill-Rom acted with malice or reckless indifference to the rights of Plaintiff to be free from sexual discrimination and harassment. Plaintiff therefore requests punitive damages of not less than \$300,000 pursuant to 42 USC §1981a(a)(1).

21.

Plaintiff is entitled to her costs, disbursements, pre and post-judgment, and reasonable attorney fees incurred herein pursuant to 42 USC §2000e-5(k).

**PLAINTIFF'S SECOND CLAIM AGAINST DEFENDANTS**

**(29 U.S.C. §§ 621-634, Age Discrimination/ Retaliation)**

22.

Plaintiff realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 15 and 17.

23.

Hill-Rom discriminated against plaintiff on account of her age and/or retaliated against plaintiff for complaining of age discrimination, in violation of 29 U.S.C. § 623(a), as alleged in paragraph 17.

24.

As a result of Hill-Rom's unlawful actions, plaintiff has suffered and will continue to suffer lost wages, wage increases and certain employment benefits, and is entitled to back pay and front pay in lieu of reinstatement in an amount to be determined at trial, pursuant to §626(b).

25.

Plaintiff was required to hire an attorney to prosecute this action and is entitled to an award of reasonable attorney fees, expert witness fees, and costs incurred herein, pursuant to one or more of the following: 29 U.S.C. § 626(b); 29 U.S.C. §216(b).

26.

Hill-Rom's acts and omissions alleged herein were willful, and in addition to such other remedies to which plaintiff is entitled, plaintiff is entitled to recover liquidated damages pursuant to 29 U.S.C. §626(b).

### **PLAINTIFF'S THIRD CLAIM AGAINST DEFENDANTS**

#### **(ORS 659.030 - Sex/ Age Discrimination)**

27.

Plaintiff incorporates and realleges paragraphs 1 through 15 and 17 above.

28.

Discrimination because of sex and/or age is an unlawful employment practice and constitutes a violation of O.R.S. 659A.030(1)(a).

29.

As a result of Hill-Rom's actions, plaintiff has suffered economic damages and is entitled to back pay and front pay in lieu of reinstatement pursuant to ORS 659A.885(1) in an amount to be proven at trial.

///

30.

As a result of Hill-Rom's actions, plaintiff has suffered emotional distress and seeks non-economic damages, in an amount to be proven at trial, but which is alleged to be not less than \$300,000.

31.

Plaintiff is entitled to her costs, disbursements, pre and post-judgment interest as applicable, and reasonable attorney fees incurred herein pursuant to ORS 659A.885(1).

**PLAINTIFF'S FOURTH CLAIM AGAINST DEFENDANTS**

**(ORS 659.030(1)(f) - Retaliation)**

32.

Plaintiff incorporates and realleges paragraphs 1 through 15 and 17 above.

33.

Hill-Rom has taken adverse employment actions against plaintiff, as described above, in retaliation for her complaints of sex and age discrimination, in violation of ORS 659A.030(1)(f).

34.

As a direct result of Hill-Rom's actions, plaintiff has suffered economic damages and is entitled to back pay and front pay in lieu of reinstatement pursuant to ORS 659A.885(1) in an amount to be proven at trial.

35.

As a result of Hill-Rom's actions, plaintiff has suffered emotional distress and seeks non-economic damages, in an amount to be proven at trial, but which is alleged to be not less than \$300,000.

36.

Plaintiff is entitled to her costs, disbursements, pre and post-judgment interest as applicable, and reasonable attorney fees incurred herein pursuant to ORS 659A.885(1).

**PLAINTIFF'S FIFTH CLAIM AGAINST DEFENDANTS**

**(Wrongful Discharge)**

37.

Plaintiff incorporates and realleges paragraphs 1 through 15 above.

38.

It is the public policy of the State of Oregon to protect employees from discrimination in the terms of their employment based on their gender and age, and for reporting discrimination based on sex and age, as set forth in ORS 659A.003, *et seq.*, and ORS 659A.030.

39.

Hill-Rom's actual and/or constructive discharge of plaintiff was wrongful because it is in violation of public policy, in retaliation for opposing and reporting sex and age discrimination. Hill-Rom's discharge of plaintiff would thwart this public policy if left unremedied.

40.

Plaintiff does not have an existing adequate remedy at law.

41.

As a result of Hill-Rom's wrongful discharge of plaintiff, plaintiff has suffered economic damages in an amount to be proven at trial.

42.

Hill-Rom's wrongful discharge of plaintiff also caused plaintiff to suffer emotional distress for which plaintiff is entitled to non-economic damages in an amount to be determined at trial, but not less than \$300,000.

43.

Plaintiff is entitled to recover interest on the amount of her damages accruing at the rate of 9% per annum as applicable from the date of her termination until payment.

///



**JURY TRIAL DEMAND**

44.

Plaintiff demands a jury trial on all questions of fact or combined questions of law and fact raised in this complaint.

WHEREFORE, plaintiff prays for relief as set forth in her claims for relief, and for punitive damages, attorney fees, expert witness fees, costs and disbursements, and pre- and post-judgment interest as applicable, and for such other additional relief in favor of plaintiff as the court deems just and appropriate.

DATED this 8 day of January, 2008.

DOLAN GRIGGS LLP

By:

  
Martin C. Dolan, OSB No. 87205  
Attorneys for Plaintiff

Trial Attorney: Martin C. Dolan, OSB No. 87205